UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 03-344(MJD/RLE)

UNITED STATES OF AMERICA, Plaintiff, v. (1) ERNEST ANTHONY STEVENSON, and (2) PAULA RAE PETRUK, Defendants.	PROPOSED INSTRUCTIONS OF LAW OF THE PARTIES

The United States of America, by and through its attorneys, Thomas B. Heffelfinger, United States Attorney for the District of Minnesota, and Michelle E. Jones, Assistant United States Attorney, hereby submits the attached proposed instructions of law to which counsel for the United States and for defendants Ernest Stevenson and Paula Petruk have agreed.

Dated: January 18, 2005

Respectfully submitted,

THOMAS B. HEFFELFINGER
United States Attorney

s/ Michelle E. Jones

BY: MICHELLE E. JONES
Assistant U.S. Attorney

PARTIES STIPULATED JURY INSTRUCTION NO. 1

Members of the Jury:

Now that you have heard all of the evidence to be received in this trial and each of the arguments of counsel it becomes my duty to give you the final instructions of the Court as to the law that is applicable to this case. You should use these instructions to guide you in your decisions.

All of the instructions of law given to you by the Court--those given to you at the beginning of the trial, those given to you during the trial, and these final instructions--must guide and govern your deliberations.

It is your duty as jurors to follow the law as stated in all of the instructions of the Court and to apply these rules of law to the facts as you find them from the evidence received during the trial.

Counsel have quite properly referred to some of the applicable rules of law in their closing arguments to you. If, however, any difference appears to you between the law as stated by counsel and that as stated by the Court in these instructions, you, of course, are to be governed by the instructions given to you by the Court.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole in reaching your decisions.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base any part of your verdict upon any other view or opinion of the law than that given in these instructions of the Court just as it would be a violation of your sworn duty, as the judges of the facts, to base your verdict upon anything but the evidence received in the case.

You were chosen as jurors for this trial in order to evaluate all of the evidence received and to decide each of the factual questions presented by the allegations brought by the government in the superseding indictment and the pleas of not guilty by the defendants.

In resolving the issues presented to you for decision in this trial you must not be persuaded by bias, prejudice, or sympathy for or against any of the parties to this case or by any public opinion.

Justice--through trial by jury--depends upon the willingness of each individual juror to seek the truth from the same evidence presented to all the jurors here in the courtroom and to arrive at a verdict by applying the same rules of law as now being given to each of you in these instructions of the Court.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.01 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 2

There is nothing particularly different in the way that a juror should consider the evidence in a trial from that in which any reasonable and careful person would deal with any very important question that must be resolved by examining facts, opinions, and evidence. You are expected to use your good sense in considering and evaluating the evidence in the case. Use the evidence only for those purposes for which it has been received and give the evidence a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If a defendant be proved guilty beyond a reasonable doubt, say so. If not proved guilty beyond a reasonable doubt, say so.

Keep constantly in mind that it would be a violation of your sworn duty to base a verdict upon anything other than the evidence received in the case and the instructions of the Court. Remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence because the burden of proving guilt beyond a reasonable doubt is always with the government.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.02 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 3

The evidence in this case consists of the sworn testimony of the witnesses--regardless of who may have called them--all exhibits received in evidence--regardless of who may have produced them--and all facts which may have been agreed to or stipulated.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you may accept the stipulation as evidence and regard that fact as proved. You are not required to do so, however, since you are the sole judges of the facts.

Any proposed testimony or proposed exhibit to which an objection was sustained by the Court and any testimony or exhibit ordered stricken by the Court must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not proper evidence and must be entirely disregarded.

Questions, objections, statements, and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact.

You are to base your verdict only on the evidence received in the case. In your consideration of the evidence received, however, you are not limited to the bald statements of the witnesses or to the bald assertions in the exhibits. In other words, you are not limited solely to what you see and hear as the witnesses testify or as the exhibits are admitted.

You are permitted to draw from the facts which you find have been proved such reasonable inferences as you feel are justified in the light of your experience and common sense.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.03 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 4

Inferences are simply deductions or conclusions which reason and common sense lead the jury to draw from the evidence received in the case.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.05 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 5

If any reference by the Court or by counsel to matters of testimony or exhibits does not coincide with your own recollection of that evidence, it is your recollection which should control during your deliberations and not the statements of the Court or counsel.

You are the sole judges of the evidence received in this case.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.07 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 6

The questions asked by a lawyer for either party to this case are not evidence. If a lawyer asks a question of a witness which contains an assertion of fact, therefore, you may not consider the assertion by the lawyer as any evidence of that fact. Only the answers are evidence.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.08 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 7

I instruct you that you must presume the defendants to be innocent of the crimes charged. Thus the defendants, although accused of crimes in the superseding indictment, begin the trial with a "clean slate"--with no evidence against them. The indictment, as you already know, is not evidence of any kind. The law permits nothing but legal evidence presented before the jury in court to be considered in support of any charge against a defendant. The presumption of innocence alone therefore, is sufficient to acquit the defendants.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant is not even obligated to produce any evidence by cross-examining the witnesses for the government.

It is not required that the government prove guilt beyond all possible doubt. The test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense--the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Unless the government proves, beyond a reasonable doubt, that a defendant has committed each and every element of the offense charged in the indictment, you must find that defendant not guilty of the offense. If the jury views the evidence in the case as reasonably permitting either of two conclusions--one of innocence, the other of guilt--the jury must, of course, adopt the conclusion of innocence.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.10 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 8

You are here to determine whether the government has proven the guilt of the defendants for the charges in the superseding indictment beyond a reasonable doubt. You are not called upon to return a verdict as to the guilt or innocence of any other person or persons.

So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of a defendant for the crimes charged in the indictment, you should so find, even though you may believe that one or more other unindicted persons are also guilty. But if any reasonable doubt remains in your minds after impartial consideration of all the evidence in the case, it is your duty to find the defendant not guilty.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.11 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 9

A separate crime is alleged against each of the defendants in each count of the superseding indictment. Each alleged offense, and any evidence pertaining to it, should be considered separately by the jury. The fact that you find one defendant guilty or not guilty of one of the offenses charged should not control your verdict as to any other offense charged against that defendant or against any other defendant.

You must give separate and individual consideration to each charge against each defendant.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 12.13 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 10

An indictment is but a formal method used by the government to accuse a defendant of a crime. It is not evidence of any kind against a defendant. The defendants are presumed to be innocent of the crimes charged. Even though this superseding indictment has been returned against the defendants, the defendants begin this trial with absolutely no evidence against them.

The defendants have pled “Not Guilty” to this indictment and, therefore, deny that they are guilty of the charges.

1A Kevin F. O’Malley, et al., Federal Jury Practice and Instructions: Criminal § 13.04 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 11

The parties request the Court to read or summarize the indictment for the jury.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 03-344 (MJD/RLE)

UNITED STATES OF AMERICA, Plaintiff, v. (1) ERNEST ANTHONY STEVENSON, and (2) PAULA RAE PETRUK, Defendants.	**SUPERSEDING INDICTMENT** (18 U.S.C. § 2) (18 U.S.C. § 371) (18 U.S.C. § 1341) (18 U.S.C. § 1001(a)(2)) (18 U.S.C. § 981(a)(1)(C)) (28 U.S.C. § 2461(c))

THE UNITED STATES GRAND JURY CHARGES THAT:

COUNT 1
(Conspiracy)

I. INTRODUCTORY ALLEGATIONS

1. At all times relevant to this Indictment, the United States Department of Housing and Urban Development ("HUD") was a department and agency of the United States government which administers the Section 8 housing program. Through this program, HUD provides rent subsidies in the form of vouchers and certificates for low-income households. Local public housing authorities administer the program for HUD. Rental units qualifying for this program are commonly known as Section 8 housing.

2. Section 8 subsidies permit qualifying individuals and families to rent housing which they could not otherwise afford. Under regulations issued by HUD, owner-occupied rental housing is ineligible for a Section 8 subsidy.

3. The Housing and Redevelopment Authority in Duluth, Minnesota ("Duluth Housing Authority") is authorized by HUD to administer a Section 8 housing program for the Duluth area.

4. Individuals applying for Section 8 rental subsidies must complete an application disclosing, among other things, all persons who will reside in the qualifying rental unit and their respective incomes. Once approved, applicants must notify the Duluth Housing Authority of any change in the household size and annually identify those individuals who reside in the rental property.

5. Ernest Stevenson owned residential property at 6306 Roosevelt Street, Duluth, Minnesota ("Duluth Property") from some time prior to December 1, 1987 through August of 1998. Ernest Stevenson also owned residential property at 12009 St. Vincent Road in Floodwood, Minnesota ("Floodwood Property") from approximately March 1998 to the present.

6. Between December 1, 1987 and August 1, 2001, Ernest Stevenson signed Housing Voucher Contracts with the Duluth Housing Authority which qualified both the Duluth Property and the Floodwood Property for Section 8 rental subsidies from HUD.

7. Between December 1, 1987 and August 1, 2001, Paula Petruk applied for HUD-subsidized section 8 housing as a tenant in the Duluth Property and later in the Floodwood Property.

8. In her initial Section 8 applications for the Duluth Property and the Floodwood property, Paula Petruk stated, among

other things, that she and her children would reside in the respective properties. Between December 1, 1987 and August 1, 2001, Paula Petruk annually certified the composition of her household while she resided at the Duluth Property and the Floodwood Property.

9. From December 1, 1987 to August 1, 2001, Ernest Stevenson lived with Paula Petruk in the Duluth Property and later in the Floodwood Property, while he received Section 8 rental subsidies on behalf of Paula Petruk, and while each property was purportedly being rented to, and occupied solely by, Paula Petruk and her children.

10. Ernest Stevenson was ineligible to receive Section 8 rental subsidies for Paula Petruk's purported rental of the Duluth Property and the Floodwood Property because he owned and occupied both properties during Paula Petruk's participation in the Section 8 rental housing assistance program.

11. During the above time period, Ernest Stevenson and Paula Petruk received Section 8 rental subsidies for the Duluth Property and the Floodwood Property in the amount of approximately $45,500.

II. THE CONSPIRACY

12. The Grand Jury re-alleges all of the allegations contained in paragraphs 1 through 11 as if fully set forth herein.

13. Beginning on or before December 1, 1987, and continuing to approximately August 1, 2001, the exact dates being unknown to

the Grand Jury, in the State and District of Minnesota, the defendants,

ERNEST ANTHONY STEVENSON
and PAULA RAE PETRUK,

did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree together to commit an offense against the United States, that is to steal, purloin and knowingly convert to their use and benefit, money of the United States Department of Housing and Urban Development, an agency of the United States, of a value greater than $1,000, in violation of Title 18, United States Code, Section 641.

III. OBJECT OF THE CONSPIRACY

14. The object of the conspiracy was to fraudulently obtain Section 8 rental housing assistance subsidies from the Duluth Housing Authority by concealing material facts through false and fraudulent representations and documents, including concealing that Ernest Stevenson owned and resided in the Duluth Property and the Floodwood Property with Paula Petruk and her family while he received Section 8 rental subsidies on Paula Petruk's behalf.

IV. MANNER AND MEANS OF THE CONSPIRACY

It was part of the conspiracy that:

15. Paula Petruk would execute and submit to the Duluth Housing Authority false and fraudulent applications for Section 8 housing concealing that Ernest Stevenson would and did reside with

her and her family in the Duluth Property and later at the Floodwood Property.

16. Paula Petruk would annually execute and submit to the Duluth Housing Authority false and fraudulent certifications concealing that Ernest Stevenson would and did reside with her and her family in the Duluth Property and later at the Floodwood Property.

17. Paula Petruk and Ernest Stevenson would execute and submit false and fraudulent lease agreements to the Duluth Housing Authority identifying Paula Petruk as the tenant and Ernest Stevenson as solely the owner of the Duluth Property and later the Floodwood Property, during Paula Petruk's tenancies.

V. LOSS

18. As a result of the defendants' conspiracy, the victim suffered an aggregate loss of approximately $45,500.

VI. OVERT ACTS

19. In furtherance of the conspiracy and for the purpose of bringing about its unlawful objectives, the following overt acts were committed in the State and District of Minnesota:

20. On or about June 3, 1999, Paula Petruk submitted a false and fraudulent written certification of her household composition, which failed to disclose that Ernest Stevenson resided at the Duluth Property.

21. On or about June 21, 1999, Paula Petruk and Ernest Stevenson signed and later submitted to the Duluth Housing Authority a request for lease approval as tenant and landlord, respectively, rather than co-tenants, of the Floodwood property.

22. On or about June 1, 2000, Paula Petruk submitted a fraudulent written certification of her household composition, which failed to disclose that Ernest Stevenson resided at the Floodwood Property.

23. On or about June 16, 2000, Paula Petruk and Ernest Stevenson signed and later submitted to the Duluth Housing Authority a request for lease approval as tenant and landlord, respectively, rather than co-tenants, of the Floodwood Property.

24. On or about June 16, 2000, Paula Petruk and Ernest Stevenson signed and later submitted to the Duluth Housing Authority a lease agreement that identified Paula Petruk as the tenant and Ernest Stevenson as the landlord, rather than co-tenant, of the Floodwood Property during the lease period.

25. On or about June 28, 2001, Paula Petruk submitted a fraudulent written certification of her household composition, which failed to disclose that Ernest Stevenson resided at the Floodwood Property.

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(False Statements)

26. On or about June 3, 1999, in the State and District of Minnesota, the defendant,

PAULA RAE PETRUK,

in a matter within the jurisdiction of the Department of Housing and Urban Development, a department and agency of the United States, knowingly and willfully made materially false, fraudulent and fictitious statements and representations, that is, by falsely stating her household composition in a Section 8 housing program certification application, in violation of Title 18, United States Code, Section 1001(a)(2).

COUNT 3
(False Statements)

27. On or about June 1, 2000, in the State and District of Minnesota, the defendant,

PAULA RAE PETRUK,

in a matter within the jurisdiction of the Department of Housing and Urban Development, a department and agency of the United States, knowingly and willfully made materially false, fraudulent and fictitious statements and representations, that is, by falsely stating her household composition in a Section 8 housing program certification application, in violation of Title 18, United States Code, Section 1001(a)(2).

COUNT 4
(False Statements)

28. On or about June 28, 2001, in the State and District of Minnesota, the defendant,

PAULA RAE PETRUK,

in a matter within the jurisdiction of the Department of Housing and Urban Development, a department and agency of the United States, knowingly and willfully made materially false, fraudulent and fictitious statements and representations, that is, by falsely stating her household composition in a Section 8 housing program certification application, in violation of Title 18, United States Code, Section 1001(a)(2).

COUNTS 5-9
(Mail Fraud)

29. The Grand Jury re-alleges all of the allegations contained in paragraphs 1 through 11 and 14 through 25 as if fully set forth herein.

30. From approximately December 1, 1987 through August 1, 2001, the defendants,

ERNEST ANTHONY STEVENSON
and PAULA RAE PETRUK,

each aiding and abetting the other, and being aided and abetted by the other, did unlawfully and knowingly devise and intend to devise a scheme and artifice to defraud the Duluth Housing Authority and the Department of Housing and Urban Development ("HUD") and to obtain money by means of false and fraudulent pretenses and representations, and concealment of material facts.

31. It was part of the scheme and artifice to defraud that the defendants submitted documents containing false and fraudulent representations and concealing material facts to the Duluth Housing Authority and HUD to qualify for and obtain Section 8 rental subsidy payments.

32. On or about the dates specified below for each count, in the State and District of Minnesota, the defendants,

ERNEST ANTHONY STEVENSON
and PAULA RAE PETRUK,

each aiding and abetting the other, and being aided and abetted by the other, for the purpose of executing the above-described scheme and artifice to defraud did knowingly cause to be delivered by the United States Postal Service or by private or commercial interstate carrier according to the directions thereon, and did receive therefrom, the following matters:

COUNT	**APPROX. DATE OF MAILING**	**DESCRIPTION OF MATTER MAILED**	**ADDRESSEE**
5	10/29/99	Rental subsidy check from Duluth Housing Authority	Ernest Stevenson 1727 W. 2nd St. Duluth, MN 55806
6	3/31/00	Rental subsidy check from Duluth Housing Authority	Ernest Stevenson 1727 W. 2nd St. Duluth, MN 55806
7	7/31/00	Rental subsidy check from Duluth Housing Authority	Ernest Stevenson 1727 W. 2nd St. Duluth, MN 55806

COUNT	APPROX. DATE OF MAILING	DESCRIPTION OF MATTER MAILED	ADDRESSEE
8	2/28/01	Rental subsidy check from Duluth Housing Authority	Ernest Stevenson 1727 W. 2nd St. Duluth, MN 55806
9	6/29/01	Rental subsidy check from Duluth Housing Authority	Ernest Stevenson P.O. Box 161691 Duluth, MN 55816

All in violation of Title 18, United States Code, Sections 2 and 1341.

FORFEITURE ALLEGATIONS

Counts 1, 8 and 9 of this Superseding Indictment are hereby re-alleged and incorporated as if fully set forth herein by reference, for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

As the result of the offenses alleged in Counts 1, 8 and 9 of this Superseding Indictment, the defendants,

ERNEST ANTHONY STEVENSON
and PAULA RAE PETRUK,

shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), all their right, title and interest in any property constituting, or derived from, proceeds traceable to the violations of Title 18, United States Code, Sections 371 and 1341.

If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third person;

(3) has been placed beyond the jurisdiction of the Court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendants up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Sections 371, 1341 and 981(a)(1)(C), and Title 28, United States Code, Section 2461(c).

A TRUE BILL

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UNITED STATES ATTORNEY FOREPERSON

PARTIES STIPULATED JURY INSTRUCTION NO. 12

The superseding indictment charges that the offenses alleged were committed "on or about" a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 13.05 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 13

Count 1 of the superseding indictment charges that from on or before December 1, 1987 to approximately August 1, 2001, in the State and District of Minnesota, the defendants came to some type of agreement or understanding to commit an offense against the United States, namely theft of government money, and then acted to achieve the goals of the alleged conspiracy or agreement or understanding in that one or both of them thereafter took one of the overt actions described in the indictment.

Section 371 of Title 18 of the United States Code provides in part that:

> If two or more persons conspire . . . to commit any offense against the United States, . . . and one or more of such persons do any act to effect the object of the conspiracy . . . an offense against the United States has been committed.

2 Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal §§ 31.01, 31.02 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 14

The crime of conspiracy as charged in Count 1 of the superseding indictment, has four essential elements, which are:

One, on or before August 1, 2001, two or more persons reached an agreement or came to an understanding to commit theft of government money;

Two, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

Three, at the time the defendant joined in the agreement or understanding, he or she knew the purpose of the agreement or understanding; and

Four, while the agreement or understanding was in effect, a person or persons who had joined in the agreement knowingly did one or more of the acts listed in the indictment as overt acts for the purpose of carrying out or carrying forward the agreement or understanding.

For you to find a defendant guilty of this crime the government must prove all of these essential elements beyond a reasonable doubt as to the defendant; otherwise you must find the defendant not guilty.

Judicial Committee on Model Criminal Jury Instructions for the Eighth Circuit, Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit § 5.06A (2003 ed.).

PARTIES STIPULATED JURY INSTRUCTION NO. 15

The government must prove that the defendant reached an agreement or understanding with at least one other person. It makes no difference whether that person is a defendant or named in the indictment. You do not have to find that all of the persons charged were members of the conspiracy.

The "agreement or understanding" need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others or merely associating with others, does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy but who happens to act in a way which advances some purpose of one, does not thereby become a member.

But a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

You must decide, after considering all of the evidence, whether the conspiracy alleged in Count 1 of the indictment existed. If you find that the alleged conspiracy did exist, you must also decide whether the defendant voluntarily and intentionally joined the conspiracy, either at the time it was first formed or at some later time while it was still in effect. In making that decision, you must consider only evidence of the defendant's own actions and statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that had been said or done by the defendant.

Judicial Committee on Model Criminal Jury Instructions for the Eighth Circuit, Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit § 5.06B (2003 ed.).

PARTIES STIPULATED JURY INSTRUCTION NO. 16

To assist you in determining whether there was an agreement or understanding to steal government money, you are advised that the elements of theft of government money are:

One, the defendant voluntarily, intentionally and knowingly stole or converted money to his or her own use or to the use of another; and

Two, the money belonged to the United States and had a value in excess of One Thousand Dollars ($1,000); and

Three, the defendant did so with intent to deprive the owner of the use or benefit of the money.

You may use these definitions of the elements of the offense in considering whether the defendants conspired to commit theft of government money, keeping in mind that Count 1 charges a conspiracy to commit theft of government money and not that theft of government money was committed.

Judicial Committee on Model Criminal Jury Instructions for the Eighth Circuit, Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit §§ 5.06C, 6.18.641 (2003 ed.).

PARTIES STIPULATED JURY INSTRUCTION NO. 17

It is not necessary that the act done in furtherance of the conspiracy be in itself unlawful. It may be perfectly innocent in itself.

It is not necessary that the defendant have personally committed the act, known about it, or witnessed it. It makes no difference which of the conspirators did the act. This is because a conspiracy is a kind of "partnership" so that under the law each member is an agent or partner of every other member and each member is bound by or responsible for the acts of every other member done to further their scheme.

It is not necessary that the government prove, beyond a reasonable doubt, that more than one act was done in furtherance of the conspiracy. It is sufficient if the government proves beyond a reasonable doubt, one such act; but in that event, in order to return a verdict of guilty, you must unanimously agree upon which act was done.

Judicial Committee on Model Criminal Jury Instructions for the Eighth Circuit, Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit § 5.06D (2003 ed.).

PARTIES STIPULATED JURY INSTRUCTION NO. 18

It is not necessary for the government to prove that the conspirators actually succeeded in accomplishing their unlawful plan.

Judicial Committee on Model Criminal Jury Instructions for the Eighth Circuit, Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit § 5.06E (2003 ed.).

PARTIES STIPULATED JURY INSTRUCTION NO. 19

Counts 2 through 4 of the superseding indictment charge that on or about June 3, 1999, June 1, 2000 and June 28, 2001, in the State and District of Minnesota, defendant Paula Rae Petruk knowingly made a false, fictitious, or fraudulent statement or representation concerning a material fact within the jurisdiction of the U.S. Department of Housing and Urban Development, an agency of the United States, by falsely stating her household composition in a Section 8 housing program certification application.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 40.05 (5th ed. 2000).

JURY INSTRUCTION NO. 20

Section 1001(a)(2) of Title 18 of the United States Code provides, in part, that:

> "Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States — makes any materially false, fictitious or fraudulent statements or representation..."

shall be guilty of an offense against the United States.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 40.06 (5th ed. 2000).

JURY INSTRUCTIONS NO. 21

The crime of making a false, fictitious or fraudulent material statement or representation in a matter within the jurisdiction of a governmental agency, as charged in Counts 2 through 4 of the superseding indictment, has three essential elements which are:

One, the defendant knowingly, voluntarily and intentionally made a false, fictitious or fraudulent statement or representation in the Section 8 housing program certification application;

Two, the statement or representation was material to the U.S. Department of Housing and Urban Development ("HUD"); and

Three, the Section 8 housing program certification application was a matter within the jurisdiction of HUD. You may find that this element has been satisfied if you find that the HUD's function includes administering the Section 8 housing program.

A statement is "false" or "fictitious," if untrue when made, and then known to be untrue by the person making it or causing it to be made. A statement or representation is "fraudulent," if known to be untrue, and made or caused to be made with the intent to deceive the governmental agency to whom it was submitted.

A statement or representation is "material," if it has a natural tendency to influence, or is capable of influencing, the decision of the agency.

For you to find a defendant guilty of this crime the government must prove all of these essential elements beyond a reasonable doubt as to the defendant; otherwise you must find the defendant not guilty.

Judicial Committee on Model Criminal Jury Instructions for the Eighth Circuit, Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit §6.18.1001B (2003 ed.) (modified).

PARTIES STIPULATED JURY INSTRUCTION NO. 22

Counts 5 through 9 of the superseding indictment charge that on or about certain dates, in the State and District of Minnesota, the defendants knowingly devised and executed a scheme to defraud and to obtain money by means of false and fraudulent pretenses, representations, and concealment of material facts, and thereafter used the United States mails in order to, in some fashion, advance or further the scheme to defraud and obtain money by means of false representations.

The general nature of the scheme to defraud and to obtain money by means of false or fraudulent pretenses and representations as alleged in Counts 5 through 9 of the indictment is that the defendants submitted documents containing false and fraudulent representations and concealing material facts to the Duluth Housing Authority and HUD to qualify for and obtain Section 8 rental subsidy payments to which they were not entitled.

The defendants have entered pleas of not guilty to this allegation in the indictment.

The government, therefore, assumes the responsibility of proving each of the essential elements of the crime of using the mails to further a scheme to defraud or to obtain money by means of false or fraudulent pretenses, representations and concealment of material facts as charged in Counts 5 through 9 of the superseding indictment beyond a reasonable doubt.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.01 (5th ed. 2000)(modified).

PARTIES STIPULATED JURY INSTRUCTION NO. 23

Section 1341 of Title 18 of the United States Code provides, in part, that:

> Whoever, having devised or intending to devise any scheme or artifice to defraud or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, . . . for the purpose of executing such scheme or artifice or attempting to do so, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom . . . or knowingly causes to be delivered by mail or such carrier according to the direction thereon . . .

shall be guilty of an offense against the United States.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.02 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 24

In order to sustain its burden of proof for the crime of using the mails to further a scheme to defraud or to obtain money by means of false or fraudulent pretenses or representations as charged in Counts 5 through 9 of the indictment, the government must prove the following four (4) essential elements beyond a reasonable doubt:

One, The defendant knowingly devised or knowingly participated in a scheme to defraud or to obtain money by means of false or fraudulent pretenses or representations or concealment of material facts as detailed in Counts 5 through 9 of the superseding indictment;

Two, The scheme to defraud or the pretenses and representations or facts concealed were material, that is it would reasonably influence a person to part with money or property;

Three, The defendant did so with the intent to defraud; and

Four, In advancing, or furthering, or carrying out this scheme to defraud or to obtain money by means of false or fraudulent pretenses or representations or concealment of material facts the defendant used the mails or a private interstate carrier or caused the mails or a private interstate carrier to be used.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.03 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 25

The use of the United States mails or of a private or commercial interstate carrier is an essential element of the offense of mail fraud as charged in Counts 5 through 9 of the indictment.

The government is not required to prove that the defendant actually mailed or sent anything or that the defendant even intended that the mails or an interstate carrier would be used to further, or to advance, or to carry out the scheme to defraud or to obtain money by false or fraudulent pretenses, or representations.

The government must prove beyond a reasonable doubt, however, that the mails or an interstate carrier were, in fact, used in some manner to further, or to advance, or to carry out the scheme to defraud or to obtain money by false or fraudulent pretenses or representations. The government must also prove that the use of the mails or interstate carrier would follow in the ordinary course of business or events or that the use of the mails or interstate carrier by someone was reasonably foreseeable.

It is not necessary for the government to prove that the item itself mailed or sent was false or fraudulent or contained any false or fraudulent statement, representation, or promise, or contained any request for money or thing of value.

The government must prove beyond a reasonable doubt, however, that the use of the mails or interstate carrier furthered, or advanced, or carried out, in some way, the scheme to defraud or to obtain money by means of false or fraudulent pretenses or representations.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.04 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 26

The phrase "any scheme to defraud or to obtain money" means any deliberate plan of action or course of conduct by which someone intends to deceive or to cheat another or by which someone intends to deprive another of something of value.

The term "false or fraudulent pretenses or representations" means a statement or an assertion which concerns a material or important fact or a material or important aspect of the matter in question and that was either known to be untrue at the time that it was made or used, or that was made or used with reckless indifference as to whether it was, in fact, true or false, and made or used with the intent to defraud. A material fact is a fact that would be of importance to a reasonable person in making a decision about a particular matter or transaction.

The term "false or fraudulent pretenses or representations" includes actual, direct false statements as well as half-truths, and includes the knowing concealment of facts that are material or important to the matter in question and that were made or used with the intent to defraud.

A "scheme to defraud" includes a scheme to deprive another person of tangible as well as intangible property rights. Intangible property rights means anything valued or considered to be a source of wealth including, for example, the right to honest services and the right to decide how one's money is spent.

It is not necessary for the government to prove that the defendant was actually successful in defrauding anyone or in obtaining money by means of false or fraudulent pretenses or representations. It is not necessary for the government to prove that anyone lost any money or property as a result of the scheme to defraud or to obtain money by means of false or fraudulent pretenses or representations.

An unsuccessful scheme or plan to obtain money by means of false or fraudulent pretenses, representations, or promises is as illegal as a scheme or plan that is ultimately successful.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.13 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 27

To act with an "intent to defraud" means to act knowingly and with the intention or the purpose to deceive or to cheat.

An intent to defraud is accompanied, ordinarily, by a desire or a purpose to bring about some gain or benefit to oneself or some other person or by a desire or a purpose to cause some loss to some person.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.14 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTIONS NO. 28

Each use of the mails or of an interstate carrier to advance, or to further, or to carry out the scheme to defraud or to obtain money by means of false or fraudulent pretenses or representations may be a separate violation of the mail fraud statute.

2A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 47.15 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 29

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person "aided and abetted" the commission of the offense.

Section 2(a) of Title 18 United States Code provides:

> Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself or herself in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of the crimes charged in Counts 5 through 9 of the superseding indictment, the government must prove beyond a reasonable doubt that the defendant:

One, knew that the crime charged was to be committed or was being committed,

Two, knowingly did some act for the purpose of aiding the commission of that crime, and

Three, acted with the intention of causing the crime charged to be committed.

Before a defendant may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that someone committed each of the essential elements of the offense charged as detailed for you.

Merely being present at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that a defendant aided and abetted the commission of that crime.

The government must prove that the defendant knowingly and deliberately associated himself or herself with the crime in some way as a participant - someone who wanted the crime to be committed - not as a mere spectator.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 18.01 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 30

Charts or summaries have been prepared by the government, have been admitted into evidence, and have been shown to you during the trial for the purpose of explaining facts that are allegedly contained in books, records, and other documents which are also in evidence in the case. You may consider the charts and summaries as you would any other evidence admitted during the trial and give them such weight or importance, if any, as you feel they deserve.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 14.02 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 31

Evidence relating to any alleged statement, confession, admission, or act or omission alleged to have been made or done by a defendant outside of court and after a crime has been committed should always be considered with caution and weighed with great care. All such alleged statements, confessions, or admissions should be disregarded entirely unless the other evidence in the case convinces the jury beyond a reasonable doubt that the statement, confession, admission, or act or omission was made or done knowingly and voluntarily.

In determining whether any statement, confession, admission, or act or omission alleged to have been made by a defendant outside of court and after a crime has been committed was knowingly and voluntarily made or done, the jury should consider the age, training, education, occupation, and physical and mental condition of the defendant, and his or her treatment while in custody or under interrogation as shown by the evidence in the case. Also consider all other circumstances in evidence surrounding the making of the alleged statement, confession, or admission.

If after considering the evidence you determine that a statement, confession, admission, or act or omission was made or done knowingly and voluntarily by a defendant, you may give it such weight as you feel it deserves under the circumstances in deciding the case against that defendant.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 14.04 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 32

You, as jurors, are the sole and exclusive judges of the credibility of each of the witnesses called to testify in this case and only you determine the importance or the weight that their testimony deserves. After making your assessment concerning the credibility of a witness, you may decide to believe all of that witness's testimony, only a portion of it, or none of it.

In making your assessment of that witness you should carefully scrutinize all of the testimony given by that witness, the circumstances under which each witness has testified, and all of the other evidence which tends to show whether a witness, in your opinion, is worthy of belief. Consider each witness's intelligence, motive to falsify, state of mind, and appearance and manner while on the witness stand. Consider the witness's ability to observe the matters as to which he or she has testified and consider whether he or she impresses you as having an accurate memory or recollection of these matters. Consider also any relation a witness may bear to either side of the case, the manner in which each witness might be affected by your verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause you to disbelieve or discredit such testimony. Two or more persons witnessing an incident or a transaction may simply see or hear it differently. Innocent misrecollection, like failure of recollection, is not an uncommon human experience. In weighing the effect of a discrepancy, however, always consider whether it pertains to a matter of importance or an insignificant detail and consider whether the discrepancy results from innocent error or from intentional falsehood.

After making your own judgment or assessment concerning the believability of a witness, you can then attach such importance or weight to that testimony, if any, that you feel it deserves. You will then be in a position to decide whether the government has proven the charges beyond a reasonable doubt.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 15.01 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 33

You should judge the testimony of the defendants in the same manner as you judge the testimony of any other witness in this case.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 15.12 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 34

A defendant in a criminal case has an absolute right under our Constitution not to testify.

The fact that a defendant did not testify must not be discussed or considered in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his or her privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or of producing any evidence.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 15.14 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 35

The intent of a person or the knowledge that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind. In determining the issue of what a person knew or what a person intended at a particular time, you may consider any statements made or acts done by that person and all other facts and circumstances received in evidence which may aid in your determination of that person's knowledge or intent.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 17.07 (5th ed. 2000).

PARTIES STIPULATED JURY INSTRUCTION NO. 36

Upon retiring to your jury room to begin your deliberations, you must elect one of your members to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in court.

Your verdict must represent the collective judgment of the jury. In order to return a verdict, it is necessary that each juror agree to it. Your verdict, in other words, must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with one another with a view towards reaching an agreement if you can do so without violence to individual judgment. Each of you must decide the case for himself and herself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and to change your opinion if convinced it is erroneous. Do not surrender your honest conviction, however, solely because of the opinion of your fellow jurors or for the mere purpose of thereby being able to return a unanimous verdict.

Remember at all times that you are not partisans. You are judges--judges of the facts of this case. Your sole interest is to seek the truth from the evidence received during the trial.

Your verdict must be based solely upon the evidence received in the case. Nothing you have seen or read outside of court may be considered. Nothing that I have said or done during the course of this trial is intended in any way, to somehow suggest to you what I think your verdict should be. Nothing said in these instructions and nothing in any form of verdict, which has been prepared for your convenience, is to suggest or convey to you in any way or manner any intimation as to what verdict I think you should return. What the verdict shall be is the exclusive duty and responsibility of the jury. As I have told you may times, you are the sole judges of the facts.

The punishment provided by law for the offenses charged in the indictment is a matter exclusively within the province of the Court and should never be considered by the jury in any way in arriving at an impartial verdict as to the offenses charged.

A form of verdict has been prepared for your convenience.

[Please read the form of verdict to the jury]

You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson write your verdict, date and sign the form, and then return with your verdict to the courtroom.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note, signed by your foreperson or by one or more members of the jury, through the bailiff. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with any member of the jury concerning the evidence, your opinions, or the deliberations other than in writing or orally here in open court.

You will note from the oath about to be taken by the bailiffs that they too, as well as all other persons, are forbidden to communicate in any way or manner with any member of the jury concerning the evidence, your opinions, or the deliberations.

Bear in mind also that you are never to reveal to any person--not even to the Court--how the jury stands, numerically or otherwise, on the question of whether or not the government has sustained its burden of proof until after you have reached a unanimous verdict.

1A Kevin F. O'Malley, et al., Federal Jury Practice and Instructions: Criminal § 20.01 (5th ed. 2000).